

## Freedom of Religion – Lesson for US History AP

\*Note – This is part of a larger unit on the Supreme Court so teachers may adapt it to fit their needs

1. Open discussion with a reading of the First Amendment as it pertains to religion.
2. Pose the following discussion questions to the class:
  - How should the Court go about deciding if it is to apply the establishment or the free exercise clause of the Constitution? (In other words, which clause carries more weight?)
  - What is the scope of “establishment”? Where is the “line” at which the gov’t must limit itself from doing anything to promote or sanction religion?
  - What is the scope of “free exercise”? What behaviors may the government limit with violating a person’s freedom to practice their religion?
3. Students read and brief the cases *Wisconsin v. Yoder* and *Engel v. Vitale* (We provide excerpts of the opinions from a book we have)
4. Discuss the cases and the complexities of the application of the First Amendment
5. As part of a larger research assignment on the Supreme Court, students will role play a Supreme Court Justice and debate a fictitious case reflecting the First Amendment (attached)

## Judicial Branch Assessment-Lesson for US History AP

Below, you will find some hypothetical cases which we will be discussing as a class. We will be presenting and creating decisions for one of these cases, and you will be writing opinions for all of them.

To take part in this exercise, you will be researching and representing one of the Supreme Court justices who follow. You will need to base your arguments and decisions on past decisions made by this justice; to do so you will need to consult biographies of the justice as well as opinions written by him or her.

- Step One: Read and carefully consider the cases presented below. You will need to consult your government resources and notes to understand the discussion of the rights they involve.
- Step Two: Research the Supreme Court Justice you will be portraying in class. Become familiar with this Justice’s ideas on the issue itself, the strength and power of the central government, the limit of states’ rights, and the degree of person freedoms. You may or may not be able to obtain a case in which that Justice deals directly with the issue involved, but you will have a great deal of leeway in inferring what his or her position would be. You may use the worksheet attached to help guide your research.
- Step Three: As a class, we will hold a Supreme Court “conference” in which we will discuss one of the cases. You will be expected to bring forth opinions which represent the views your particular Justice would hold. For this part you will be graded on participation and effectiveness of argument. During this conference, you must reference a minimum of 3 previous cases. This “conference” will be carried on for two days.
- Step Four: Each “justice” will write a 2-page “Opinion.” The format and writing should be modeled on the abridged opinions we have read throughout the unit. You should reference at least 4 Supreme Court precedents in this opinion. Each Justice will also write two opinions, 1 page each in length, for the other two cases we do not role play. Each of these opinions should reference at least 2 Supreme Court precedents.

### The Cases:

Freedom of Religion: *O’Connell v. Hopewell School District, New Jersey*

Hopewell High School, a public school in Hopewell, NJ, has a practice in which student athletes voluntarily conduct a student-led prayer prior to each game; the prayer takes place on school grounds, either in the locker room, on the court, or on the field. The coaches may participate in the prayer and kneel with the students if they are doing so, but he or she may not lead the prayer. John O'Connell, the father of two boys on the basketball team, has sued for an end to the prayer on school grounds. His sons do not participate in the prayer, and for the time they have been on the team have been the only ones not to do so. He argues that their decision to abstain from praying with the team ostracizes them from the other athletes and has caused some of their fellow athletes and other classmates to ridicule them. Furthermore, he argues that coaches who participate in the prayer, as the football coach does, send a message that the school endorses the practice and is in fact establishing a religion. The Board of Education argues that to ban the practice would in fact be a violation of the free exercise of religion for both the athletes and their coaches.

#### Freedom of Speech: Slater v. Brookings Board of Education

Brookings High School in New Jersey adopted a policy of suspending any student who posts malicious information about a teacher on their "My Wall" account until the offending information is removed. Elizabeth Slater was suspended after creating a fictitious profile of a teacher at the school. Using a photograph from the school yearbook, she created a profile that listed the teacher's profession as "Slave Driver" and included "drugs, bank robbery, and murder" as hobbies. She then regularly updated this "profile" by discussing activities that the teacher and the school administration found to be offensive. She created the actual profile at home, but admitted that she updated it both from home and from school on her phone. By the time the profile was removed, more than 75% of the student body, as well as students at other area schools, had become "acquaintance" of the fictitious profile. The school district argues that Slater's message board presented a "clear and present danger" to the school, and that her language could be interpreted as presenting "fighting words." Slater argues that "hate speech" is constitutionally protected and that the claims made on the profile were so exaggerated and outlandish that all involved knew that there was no truth to them.

#### Due Process: Michaels v. New Jersey

Terry Michaels was pulled over by a police officer who claimed that he had observed a broken brake light. After Michaels strenuously objected to the officer pulling him over, the officer searched the vehicle and found a substantial amount of cocaine. He then arrested Michaels who was convicted of possession and intent to sell. New Jersey law stipulates that driving with a broken brake light is not illegal as long as other brake lights are functioning. Michaels is appealing his conviction, claiming that there was no probable cause to search his car since the initial stop was not based on illegal activity. The officer claims that his initial reason for pulling Michaels over was to inform him of the broken brake light, and that it was Michaels behavior and demeanor that provided him with probable cause to conduct the search.

#### The Justices

Oliver Wendell Holmes (1902-1932)  
Louis Dembitz Brandeis (1916-1939)  
Pierce Butler (1923-1939)  
Harlan Fiske Stone (1925-1941)  
Charles Evans Hughes (1930-1941)  
Felix Frankfurter (1939-1962)  
Benjamin Nathan Cardozo (1932-1938)  
Hugo Black (1937-1971)  
William Douglas (1939-1975)

Frank Murphy (1940-1949)  
Robert Jackson (1941-1954)  
Wiley Blount Rutledge (1943-1949)  
Sherman Minton (1949-1956)  
Earl Warren (1953-1969)  
John Marshall Harlan II (1955-1971)  
William Brennan (1956-1990)  
Charles Evans Whittaker (1957-1962)  
Byron Raymond White (1962-1993)  
Abe Fortas (1965-1969)  
Thurgood Marshall (1967-1991)  
Warren Earl Burger (1969-1986)  
Harry A. Blackmun (1970-1994)  
Lewis Powell (1972-1987)  
John Paul Stevens (1975-2010)  
William H. Rehnquist (1986-2005)  
Anthony M. Kennedy (1988-)  
Antonin Scalia (1986- )  
Clarence Thomas (1991-)  
Ruth Bader Ginsberg (1994-)  
John Roberts (2005-)

## How To Research the Judicial Branch Assessment

Step One: Gale Reference Online

To Search (Terms to Use):

- The Issue: Terms such as religion, speech, due process, as well as establishment clause, hate speech, plain view, etc. can give you background information and case history.
- Relevant Cases

Citation: Citations for each entry are provided at the bottom of the page.

Step Two: Cases

After getting some background information on key cases, select the cases you wish to research and study further. Once you have done so:

- Go to [www.oyez.com](http://www.oyez.com)
- Use the search bar to look for specific cases (if you know the party names) and/or issues (school prayer, search and seizure, internet regulation, etc.)

Citation: Supreme Court cases are recorded with one of three citation systems. The most common is *Party Name v. Party Name*, Volume Number U.S. Beginning page number (Year).

Example: *New York Times Company v. United States*, 403 U.S. 713 (1971). This citation style is sufficient when you refer to a case.

Step Three: Secondary Sources

You may wish to consult some book sources or databases for additional information about a particular justice, case, or topic. Use standard citations for these sources.

